IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,	*	CRIMINAL NO. 00-6
Plaintiff,	*	
v.	*	
RICHARD ROLAND BROWN,	*	JURY INSTRUCTIONS
Defendant.	*	

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MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING INSTRUCTIONS:

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INSTRUCTION NO. 1

INTRODUCTION

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, *all* instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

DUTY OF JURY

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

EVIDENCE

I have mentioned the word "evidence." The "evidence" in this case consists of:

1) the testimony of witnesses,
2) the documents and other things received as exhibits,
3) the facts that have been stipulated -- this is, formally agreed to by the parties,
4) the facts that have been judicially noticed -- this is, facts which I say you may, but are not required to, accept as true, even without evidence.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1) Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.
2) Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3) Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.
4) Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NO. 4

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence–such as the testimony of an eyewitness. The other is circumstantial evidence–the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of a defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

INSTRUCTION NO. 5

CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 6

INDICTMENT

The Superseding Indictment in this case charges the defendant, RICHARD ROLAND BROWN as follows:

1) Count One charges the defendant, RICHARD ROLAND BROWN, committed the crime of conspiracy to knowingly and intentionally distribute methamphetamine or cocaine, both Schedule II controlled substances, or marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841 (a)(1) and 846.

2) Count Two charges the defendant, RICHARD ROLAND BROWN, committed the crime of knowingly and intentionally employing, hiring, using, persuading, inducing, enticing or coercing, a person under eighteen years of age to assist in the conspiracy to distribute methamphetamine or cocaine, both Schedule II controlled substances, or marijuana, a Schedule I controlled substance, as charged in Count 1, in violation of Title 21, United States Code, Section 861.

The defendant, RICHARD ROLAND BROWN, has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the Government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon a defendant to prove that he is innocent.

INSTRUCTION NO. 7

DEFINITION OF "ON OR ABOUT"

You will have observed that in the Superseding Indictment the phrase "on or about" is used with reference to certain dates. It is not necessary that the government prove that all alleged acts occurred on or within the exact dates set forth in the Superseding Indictment. The government need only prove that the act charged in the Superseding Indictment occurred within a reasonable time of the dates or over an interval of time that includes the dates.

INSTRUCTION NO. 8

PRESUMPTION OF INNOCENCE

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against the defendant.

INSTRUCTION NO. 9

ELEMENTS OF THE OFFENSE–COUNT 1

The crime of conspiracy to distribute methamphetamine or cocaine or marijuana, as charged in Count One of the Superseding Indictment, has three essential elements, which are:

1) On or about May 1, 1997, and continuing to on or about January 12, 2000, in the Southern District of Iowa and elsewhere, two or more persons reached an agreement or came to an understanding to knowingly and intentionally distribute methamphetamine or cocaine or marijuana;

2) The defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

3) At the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the crime charged under Count One, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count One.

INSTRUCTION NO. 10

AGREEMENT

In Count One, the crime of conspiracy is charged against the Defendant. The Government must prove that defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the Superseding Indictment.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily prove the existence of a conspiracy.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count One of the Superseding Indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and

statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

INSTRUCTION NO. 11

SUCCESS OF CONSPIRACY NOT REQUIRED

It is not necessary for the Government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

INSTRUCTION NO. 12

ELEMENTS OF THE OFFENSE–COUNT 2

The crime of employing, hiring, using, persuading, inducing, enticing, or coercing a person under eighteen years of age to assist in the conspiracy to distribute methamphetamine, cocaine, or marijuana, as charged in Count Two of the Superseding Indictment, has four essential elements, which are:

1) The defendant intentionally employed, hired, used, persuaded, induced, enticed or coerced a person under eighteen years of age to assist in the conspiracy to distribute methamphetamine, cocaine, or marijuana;

2) The defendant knew that it was methamphetamine, cocaine, or marijuana;

3) The defendant was at least 18 years of age; and

4) The minor was under the age of 18.

For you to find the defendant guilty of the crime charged under Count Two, the government must prove all of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of this crime under Count Two.

INSTRUCTION NO. 13

CONSPIRACY: MULTIPLE OFFENSES

The Superseding Indictment charges a conspiracy to commit three separate crimes or offenses. It is not necessary for the Government to prove a conspiracy to commit *all* of those offenses. It would be sufficient if the Government proves, beyond a reasonable doubt, a conspiracy to commit *one* of those offenses; but, in that event, in order to return a verdict of guilty, you must unanimously agree upon *which* of the three offenses was the subject of the conspiracy. In this case, you must decide which of the controlled substances, if any, defendant conspired to distribute and record your unanimous verdict on the form provided. If you cannot agree in that manner, you must find the defendant not guilty.

INSTRUCTION NO. 14

PROOF OF INTENT OR KNOWLEDGE

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done[1] by the defendant, and all the facts and circumstances in evidence which may aid in a determination of defendant's knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 15

REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 16

CONSPIRACY: CO-CONSPIRATOR ACTS AND STATEMENTS

You may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant even though they were done or made in the absence of and without the knowledge of the defendant. This includes acts done or statements made before the defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

INSTRUCTION NO. 17

STATUTE

Title 21, United States Code, Section 841(a)(1), provides in pertinent part that:

> It shall be unlawful for any person knowingly or intentionally to distribute . . . or possess with intent to. . . distribute . . .
>
> The term "distribute" means to deliver . . . a controlled substance.
>
> The term "deliver" means the actual, constructive or attempt to transfer of a controlled substance and includes a "sale".
>
> Methamphetamine or cocaine are both Schedule II controlled substances under the laws of the United States. Marijuana is a Schedule I controlled substance.

Title 21, United States Code, Section 846, provides in pertinent part that:

> Any person who ... conspires to commit any offense ... shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy.

INSTRUCTION NO. 18

TESTIMONY UNDER GRANT OF IMMUNITY OR PLEA BARGAIN

You have heard evidence that certain witnesses have made a plea agreement with the Government, have received a promise from the Government that the witness will not be prosecuted, or have received a promise from the Government that the witness's testimony will not be used against him or her in a criminal case. Such witness testimony was received in evidence and may be considered by you. You may give each witness's testimony such weight as you think it deserves. Whether or not each witness's testimony may have been influenced by the plea agreement or Government's promise is for you to determine.

The witness' guilty pleas cannot be considered by you as any evidence of this defendant's guilt. The witness' guilty pleas can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. 19

ELECTION OF A FOREPERSON/DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict - whether guilty or not guilty - must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the Government has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or bailiff, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fifth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict whether guilty or not guilty must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. [The form reads: (read form)]. You will take this form to the jury room, and when each of you has agreed on the verdicts, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

June 7, 2000
DATE

Robert W. Pratt
ROBERT W. PRATT, JUDGE
UNITED STATES DISTRICT COURT

10.02 DUTY TO DELIBERATE (

As stated in my instructions, it is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to a unanimous result you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if in your individual judgment the evidence fails to establish guilt beyond a reasonable doubt, then the defendant should have your vote for a not guilty verdict. If all of you reach the same conclusion, then the verdict of the jury must be not guilty. Of course the opposite also applies. If in your individual judgment the evidence establishes guilt beyond a reasonable doubt, then your vote should be for a verdict of guilty and if all of you reach that conclusion then the verdict of the jury must be guilty. As I instructed you earlier, the burden is upon the Government to prove beyond a reasonable doubt every essential element of the crime[s] charged.

Finally, remember that you are not partisans; you are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. But I suggest that you carefully [re]consider all the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.[1]

Supplemental Instructions

[Please go back now to finish your deliberations in a manner consistent with your good judgment as reasonable persons.][2]

Committee Comments

See 1 Edward J. Devitt, et al., FEDERAL JURY PRACTICE AND INSTRUCTIONS: Civil and Criminal § 20.08 (4th ed. 1992); Federal Judicial Center, Pattern Jury Criminal Instructions 10 (1988); Fifth Circuit Pattern Jury Instructions: Criminal § 1.43 (1997); Seventh Circuit Federal Jury Instructions: Criminal § 7.06 (1999); Ninth Cir. Crim. Jury Instr. 7.1 (1997). *See generally* West Key # "Criminal Law" 768(3), 865(1), 1174(1).

It is preferable that an "Allen" type instruction be given as part of the regular final instructions, before the jurors begin their deliberations. *United States v. Webb*, 816 F.2d 1263, 1266 n.4 (8th Cir. 1987); *Potter v. United States*, 691 F.2d 1275, 1277 (8th Cir. 1982), and cases cited therein. *See* Instruction 3.12, *supra*.

If that has been done, and if the circumstances are appropriate, either the same instruction may be repeated later or this instruction 10.02 may be given if the jury announces difficulty in reaching a verdict. *United States v. Singletary*, 562 F.2d 1058, 1061 (8th Cir. 1977); *United States v. Cortez*, 935 F.2d 135, 140 (8th Cir. 1991). *See also* ABA Standards Relating to Trial by Jury § 5.4.

The language of this instruction covers the essential points of the traditional "Allen" charge, taken from the instruction approved in *United States v. Smith*, 635 F.2d 716, 722-23 (8th Cir. 1980). Judge Gibson noted in *Potter*, 691 F.2d at 1277 that "caution . . . dictates . . . that trial courts should avoid substantial departures from the formulations of the charge that have already received judicial approval." This instruction has been approved in *United States v. Thomas*, 946 F.2d 73 (8th Cir. 1991).

According to the holding in *Potter*, it would be permissible to give the present instruction as a supplemental charge upon deadlock, in lieu of repeating the paragraphs under the "Second" point in Instruction 3.12, *supra*.

As to when and in what circumstances a supplemental instruction may be appropriate, *see generally Potter v. United States, supra, United States v. Smith*, 635 F.2d 716 (8th Cir. 1980). As the Eighth Circuit has repeatedly cautioned, supplemental charges of this nature should be utilized with "great care." *United States v. Young*, 702 F.2d 133 (8th Cir. 1983); *Potter v. United States, supra*; *United States v. Smith, supra*.

It is not necessarily reversible error for the trial court to give a supplemental instruction *sua sponte* and even without direct announcement by the jury of its difficulty. *United States v. Smith, supra*. The safe practice, however, would be to give such an instruction only after the jury has

directly communicated its difficulty or the length of time spent in deliberations, compared with the nature of the issues and length of trial, and makes it clear that difficulty does exist. A premature supplemental charge certainly could, in an appropriate case, be sufficient cause for reversal.

The trial court may make reasonable inquiries to determine if a jury is truly deadlocked, but may not ask the jury of the nature and extent of its division. *Lowenfield v. Phelps*, 484 U.S. 231 (1988); *Brasfield v. United States*, 272 U.S. 448 (1926); *United States v. Webb*, 816 F.2d at 1266. The fact that the court inadvertently learns the division of the jurors does not, by itself, prevent the giving of a supplemental charge. *United States v. Cook*, 663 F.2d 808 (8th Cir. 1981); *Anderson v. United States*, 262 F.2d 764, 773-74 (8th Cir.), *cert. denied*, 360 U.S. 929 (1959). Such an instruction can be coercive, however, where the sole dissenting juror is aware that the court knows his identity. *United States v. Sae--Chua*, 725 F.2d 530 (9th Cir. 1984).

In this Circuit the defendant does not have a right to an instruction that the jury has the right to reach no decision. *United States v. Arpan*, 887 F.2d 873 (8th Cir. *en banc* 1989).

Notes on Use

1. A more expanded version of this instruction, 1 Edward J. Devitt, et al., FEDERAL JURY PRACTICE AND INSTRUCTIONS: Civil and Criminal § 20.01 (4th ed. 1992), has been approved by this Circuit. *See United States v. Smith*, 635 F.2d 716, 722-23 (8th Cir. 1980); *United States v. Singletary*, 562 F.2d 1058, 1060-61 (8th Cir. 1977); *United States v. Hecht*, 705 F.2d 976, 979 (8th Cir. 1983).

2. Use this sentence when this charge is being given after deliberations have begun.

PRELIMINARY INSTRUCTION NO. 1 -- PRELIMINARY INSTRUCTIONS

Members of the jury, before the lawyers make their opening statements, the court gives you these preliminary instructions to help you better understand what will be presented to you and how you should conduct yourselves during the trial. You are to consider these instructions, together with any oral instructions given to you during the trial and the written instructions given at the end of the case, and apply them as a whole to the facts of the case. In considering these instructions, you will attach no importance or significance whatever to the order in which they are given.

PRELIMINARY INSTRUCTION NO. 2 -- GENERAL

This is a criminal case, brought by the United States of America against defendant Richard Roland Brown. The United States of America charges this defendant with two offenses: (1) to knowingly and intentionally conspire to commit offenses against the United States, that is to knowingly and intentionally distribute methamphetamine, cocaine or marijuana; and (2) to knowingly and intentionally employ, hire, use, persuade, induce, entice, or coerce a person under the age of eighteen to assist in the conspiracy to distribute methamphetamine, cocaine, or marijuana.

The charge against the defendant is set forth in what is called an indictment. You should understand that an indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty to the offense charged, and is presumed to be innocent unless and until the government proves his guilt beyond a reasonable doubt.

It will be your duty to decide from the evidence whether the defendant, Richard Roland Brown, is guilty or not guilty of the crime charged against him. It is your duty to find from the evidence what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence. You will then apply those facts to the law which I give you in these and in my other instructions, and in that way reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it

to you.

Furthermore, your verdict must be based solely on the evidence developed at the trial or the lack of evidence. In reaching your decision as to whether the government has sustained its burden of proof, it would be improper for you to consider any personal feelings you may have about the defendant's race, religion, national origin, sex or age. All persons are entitled to the presumption of innocence and the government has the burden of proof, as I will discuss in a moment. It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with your decision-making process. To repeat, your verdict must be based exclusively upon the evidence or lack of evidence in the case.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think the verdict should be.

Finally, please remember that only the named defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crimes charged against him, not for anything else.

PRELIMINARY INSTRUCTION NO. 3 -- OUTLINE OF TRIAL

The trial will proceed in the following manner:

After I conclude with these preliminary instructions, the government's attorney may make an opening statement. Next the attorney for the defendant may, but is not required to, make an opening statement. An opening statement is not evidence, but is simply a summary of what the attorneys expect the evidence to be.

The government will then present evidence, and the attorney for the defendant may, but has no obligation to, cross-examine. Following the government's case, the defendant may, but is not required to, present evidence. If the defendant calls witnesses, the government may cross-examine them.

After presentation of evidence is completed, the court will instruct you further on the law. The attorneys will then make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. After that, I will provide you with some instructions on deliberations, and you will then retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 4 -- ELEMENTS OF OFFENSE

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime charged. In the Final Instructions, I will give you further explanations of the elements of the crime charged and provide you with definitions of important terms.

The government must prove beyond a reasonable doubt each element of the crime charged against the defendant. The indictment charges the defendant with the crime of conspiring to knowingly and intentionally distribute methamphetamine, cocaine, or marijuana.

The crime of conspiracy to distribute methamphetamine, cocaine, or marijuana, as charged in Count I of the indictment, has three essential elements, which are:

1) On or about May 1, 1997, and continuing to on or about January 12, 2000, in the Southern District of Iowa and elsewhere, two or more persons reached an agreement or came to an understanding to knowingly and intentionally distribute methamphetamine, cocaine, or marijuana.

2) That the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect; and

3) That at the time the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the crime charged under Count I, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count I.

The crime of employing, hiring, using, persuading, inducing, enticing, or coercing

a person under eighteen years of age to assist in the conspiracy to distribute methamphetamine, cocaine, or marijuana, as charged in Count Two of the indictment, has four essential elements, which are:

1) The defendant intentionally employed, hired, used, persuaded, induced, enticed or coerced a person under eighteen years of age to assist in the conspiracy to distribute methamphetamine, cocaine, or marijuana;

2) The defendant knew that it was methamphetamine, cocaine, or marijuana;

3) The defendant was at least 18 years of age; and

4) The minor was under the age of 18.

For you to find the defendant guilty of the crime charged under Count II, the government must prove each of these essential elements beyond a reasonable doubt, otherwise you must find the defendant not guilty of Count II.

PRELIMINARY INSTRUCTION NO. 5–AGREEMENT

In Count One, the crime of conspiracy is charged against the defendant. The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the Superseding Indictment.

The "agreement or understanding" need not be an expressed or formal agreement or be in writing or cover all details of how it is to be carried out. Nor is it necessary that the members have directly stated between or among themselves the details or the purpose of the scheme.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other and may have assembled together and discussed common aims and interests, does not necessarily prove the existence of a conspiracy.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play a minor part in the conspiracy, as long as that

person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins it.

In determining whether the alleged conspiracy existed you may consider the actions and statements of all the alleged participants. The agreement may be inferred from all the circumstances and the conduct of the alleged participant or participants. However, in determining whether a defendant became a member of the conspiracy, you may consider only the acts and statements as to the defendant.

PRELIMINARY INSTRUCTION NO. 6 --SUCCESS OF CONSPIRACY NOT REQUIRED

It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

PRELIMINARY INSTRUCTION NO. 7 -- PRESUMPTION OF INNOCENCE

The defendant Richard Roland Brown is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion which might arise from the arrest or charge of this individual or the fact that he is here in court. The presumption of innocence remains with Richard Roland Brown throughout the trial and alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against him.

PRELIMINARY INSTRUCTION NO. 8 -- REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of the offense charged against him in the indictment, you must find the defendant not guilty.

However, proof beyond a reasonable doubt does not mean proof beyond all doubt.

PRELIMINARY INSTRUCTION NO. 9 -- CONSPIRACY: CO-CONSPIRATOR ACTS AND STATEMENTS

If you have found beyond a reasonable doubt that a conspiracy existed and that each defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by a defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to each defendant even though they were done or made in the absence of and without the knowledge of a particular defendant. This includes acts done or statements made before each defendant had joined the conspiracy, for a person who knowingly, voluntarily and intentionally, joins an existing conspiracy is responsible for all of the conduct of the co-conspirators from the beginning of the conspiracy.

Acts and statements which are made before the conspiracy began or after it ended are admissible only against the person making them and should not be considered by you against any other defendant.

PRELIMINARY INSTRUCTION NO. 10

Title 21, United States Code, Section 841(a)(1), provides in pertinent part that:

> It shall be unlawful for any person knowingly or intentionally to distribute . . . or possess with intent to. . . distribute . . .
>
> The term "distribute" means to deliver . . . a controlled substance.
>
> The term "deliver" means the actual, constructive or attempt to transfer of a controlled substance and includes a "sale".
>
> Methamphetamine or cocaine are both Schedule II controlled substances under the laws of the United States. Marijuana is a Schedule I controlled substance.

Title 21, United States Code, Section 846, provides in pertinent part that:

> Any person who ... conspires to commit any offense ... shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy.

PRELIMINARY INSTRUCTION NO. 11 -- EQUALS IN COURT

The fact that this indictment is brought in the name of the United States of America does not entitle the prosecution to any greater consideration than any other litigant would get, but by the same token, the United States is entitled to no less consideration. The issue in this case must be decided on the evidence and on the law. The parties, prosecution and defendant, stand alike as equals before you and this court. No party is entitled to sympathy or favor.

PRELIMINARY INSTRUCTION NO. 12 -- DEFINITION OF EVIDENCE

You shall base your verdict only upon the evidence and these and other instructions which I give you during the trial.

Evidence is:

1. Testimony of witnesses.

2. Documents and other things received as exhibits by the Court.

3. Stipulations–this is, formally agreed to by the parties.

4. Facts that have been judicially noticed–this is, facts which I say you may, but are not required to accept as true, even without evidence.

Evidence may be direct or circumstantial. You should not be concerned with these terms since the law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

If you have exhibits to consider as evidence, in deciding whether and how to rely on any such exhibit, you should evaluate its contents and its relationship to the other evidence in the case. The fact that an exhibit may be given to you for your inspection does not mean that you must rely on it more than you rely on the testimony of the witnesses.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.

2. Objections and rulings on objections. Lawyers have the right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try and guess what the answer might have been.

3. Testimony I tell you to disregard.

4. Anything you see or hear about this case outside the courtroom.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you if that occurs, and instruct you on the purposes for which the item can and cannot be used.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

Likewise, the weight of the evidence should not be determined by the number or volume of documents or exhibits introduced by either the prosecution or the defendant. Neither their volume and number, nor the fact that they are in written form, should result in the documents or exhibits being given any greater consideration than any other evidence admitted in this case.

PRELIMINARY INSTRUCTION NO. 13 -- CREDIBILITY OF WITNESSES

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, the extent to which their testimony is consistent with other evidence that you believe, and anything else that will help you decide what testimony to believe.

PRELIMINARY INSTRUCTION NO. 14 - DUTY OF JURY

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense and the law as I give it to you.

PRELIMINARY INSTRUCTION NO. 15 - DIRECT & CIRCUMSTANTIAL EVIDENCE

Some of you may have heard the terms direct and circumstantial evidence. You are instructed that you should not be concerned with those terms. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

PRELIMINARY INSTRUCTION NO. 16 - BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of the hearing of the jury, either by having a bench conference here while the jury is present in the courtroom or calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 17 -NOTE TAKING

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult, and it may not be practical for the court reporter to read back lengthy testimony. Therefore, you must pay attention to the testimony as given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Also, do not let note-taking distract you, so that you do not hear other answers by the witnesses.

When you leave at night, your notes will be secured and not read by anyone.

PRELIMINARY INSTRUCTION NO. 18 - CONDUCT OF THE JURY

Finally, to ensure fairness, you as jurors must obey the following rules:

First, do not talk amongst yourselves about the case, or about anyone involved in it, until the end of the case when you go to the jury room to decide your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged.

Third, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it, until the trial has ended and your verdict has been accepted by me. If someone should try to talk with you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk to or speak with any of the parties involved in this case - you should not even pass the time of day with them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If any lawyer, party or witness does not speak with you when you pass in the hall, it is because they are not suppose to visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved in it, or listen to any radio or television reports about the case or anyone involved in it.

Sixth, do not do any research or make any investigation about this case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.